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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,970	01/26/2004	John Robert Goepfert	1453	9307

7590 05/30/2007  
Donald J. Ersler  
Attorney at Law  
725 Garvens Ave.  
Brookfield,, WI 53005

EXAMINER

CHAMBERS, TROY

ART UNIT	PAPER NUMBER
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3641

MAIL DATE	DELIVERY MODE
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05/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/764,970

Applicant(s)

GOEPFERT, JOHN ROBERT

Examiner

Troy Chambers

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Objections***

1. Applicant is advised that should claims 25-31 be found allowable, claims 32-44 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Claim 25 recites a cleanout *cover* movably engaged with a barrel. Claims 32 and 39 require that the cover be movably engaged with *an outside perimeter* of the barrel. This is inherent to claim 25 because the device is a cover and a barrel inherently includes a perimeter. Claim 32 further requires the overcoming of a slight resistance. However, air and gravity offers resistance to anything that moves. So, without more structural language describing the resistance, the claims are deemed duplicates.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 31, 38 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is not known what is meant or encompassed by the phrases "series opening pattern" or "multiple opening pattern" nor how the two distinguish from one another.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the inventor was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 25-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havlock in view of US 2003005614 issued to Cossio. Havlock discloses a gun barrel with a plurality of openings. Havlock does not appear to disclose the cover. However, Cossio discloses a cover for a paintball gun barrel. At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the barrel of Havlock with the cover of Cossio. The suggestion/motivation for doing so would have been to cover the end of the barrel and protect it from insects and the outside environment.

***Response to Arguments***

3. Applicant's arguments filed 03/08/2007 have been fully considered but they are not persuasive. Applicant basis patentability of the claims on the limitation "firing position" and "cleaning position". However, the claims presented are structural claims and are required to overcome the prior art on that basis. What element is in the firing position, the gun or the cover? What is the firing position? The examiner cannot import limitations from the specification so the applicant must be clear and specific as to what these limitations mean and they must be recited in terms of a structural limitation. This argument, however, is irrelevant. The Cossio device is a safety device for preventing

the accidental discharge of the gun. Therefore, contrary to applicant's argument, the Cossio device does not prevent firing but merely stops the projectile from going past the end of the barrel. This anticipates the "firing position" limitation of the independent claims because the combined device of Havlock and Cossio can be fired with the barrel cover in place. Additionally, when the cover is removed, the barrel can be cleaned.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a)

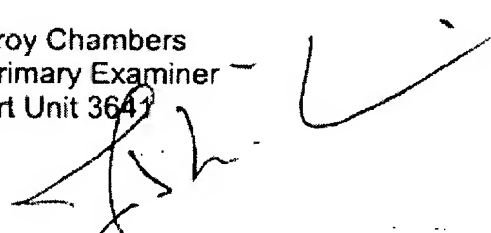
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

Troy Chambers  
Primary Examiner  
Art Unit 3641



TC  
24 May 2007